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SENATE BILL 365

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Manny M. Aragon

AN ACT

RELATING TO CONTROLLED SUBSTANCES; ENACTING THE SUBSTANCE ABUSE AND CRIME PREVENTION ACT; PROVIDING SUBSTANCE ABUSE TREATMENT FOR CERTAIN SUBSTANCE ABUSE OFFENDERS; REPEALING A SECTION OF THE CONTROLLED SUBSTANCES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the "Substance Abuse and Crime Prevention Act".

Section 2. LEGISLATIVE FINDINGS. -- The legislature finds that:

A. substance abuse treatment is a proven public safety and health measure. A nonviolent drug offender who receives appropriate substance abuse treatment will be less likely to abuse drugs and commit future crimes and will be more likely to live a healthy, stable and productive life;

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1 B. public safety will be enhanced by reducing drug-
2 related crime and by preserving jail and prison facilities for
3 violent offenders;

4 C. public health will be improved by reducing drug
5 abuse and drug dependence by referring nonviolent drug
6 offenders to substance abuse treatment programs; and

7 D. community health and safety will be enhanced and
8 taxpayer dollars will be saved if nonviolent drug offenders are
9 referred to substance abuse treatment programs instead of being
10 incarcerated.

11 Section 3. DEFINITION.--As used in the Substance Abuse
12 and Crime Prevention Act, "substance abuse treatment program"
13 means a licensed or certified community substance abuse
14 treatment program, including outpatient treatment programs,
15 halfway house treatment programs, day treatment programs,
16 narcotics replacement therapy programs, drug court programs,
17 drug education courses, drug prevention courses, limited
18 inpatient treatment programs, residential drug treatment
19 programs or detoxification programs. "Substance abuse
20 treatment program" does not include drug treatment programs
21 offered in prison or jail facilities.

22 Section 4. SUBSTANCE ABUSE TREATMENT PROGRAMS-- DEPARTMENT
23 OF HEALTH REVIEW. --

24 A. The department of health shall review and assess
25 substance abuse treatment funding appropriated to it pursuant

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1 to the provisions of Laws 2001, Chapter 330. The department
2 shall review expenditures to date and review the
3 recommendations of the July 15, 2002 report entitled *Behavioral*
4 *Health Needs and Gaps in New Mexico* in order to implement the
5 findings set forth in the Substance Abuse and Crime Prevention
6 Act.

7 B. Prior to September 1, 2003, the department of
8 health shall provide the legislative finance committee with a
9 report regarding its review of substance abuse treatment
10 funding, a plan for increasing the capacity of substance abuse
11 treatment programs and, if necessary, recommendations for
12 legislation to be introduced during the second session of the
13 forty-sixth legislature.

14 Section 5. ~~CONDITIONAL DISCHARGE--TREATMENT REQUIRED.--~~

15 A. If a person has not previously been convicted or
16 has previously been convicted once pursuant to the provisions
17 of Section 30-31-23 NMSA 1978 and is found guilty of a
18 violation of Section 30-31-23 NMSA 1978, after trial or upon a
19 plea of guilty the court shall, without entering a judgment of
20 guilty and with the consent of the person, defer further
21 proceedings and place the person on probation upon reasonable
22 conditions and for a period, not to exceed one year, as the
23 court may prescribe. The conditions of probation may include a
24 referral to an appropriate substance abuse treatment program.

25 B. Upon violation of a condition of probation, the

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1 court may enter an adjudication of guilty and proceed as
2 otherwise provided. The court may, in its discretion, dismiss
3 the proceedings against the person and discharge the person
4 from probation before the expiration of the maximum period
5 prescribed for the person's probation.

6 C. If during the period of probation the person
7 does not violate any of the conditions of the probation, upon
8 expiration of the period the court shall discharge the person
9 and dismiss the proceedings against him. A discharge or
10 dismissal shall not be deemed a conviction for purposes of
11 disqualifications or disabilities imposed by law upon
12 conviction of a crime.

13 D. Upon the dismissal of a person and discharge of
14 the proceedings against the person pursuant to this section,
15 the person, if he was not over eighteen years of age at the
16 time of the offense, may apply to the court for an order to
17 expunge the records relating to his arrest, indictment or
18 information, trial, finding or plea of guilty and dismissal and
19 discharge pursuant to this section, except nonpublic records
20 filed with the attorney general. If the court determines,
21 after a hearing, that the person was dismissed and the
22 proceedings against him discharged and that he was not over
23 eighteen years of age at the time of the offense, it shall
24 enter the order. The effect of the order shall be to restore
25 the person, in the contemplation of the law, to the status he

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1 occupied before the arrest or indictment or information. A
2 person in whose behalf an order has been entered shall not
3 subsequently be found guilty of perjury or giving a false
4 statement due to his failure to recite or acknowledge the
5 arrest, indictment, information or trial in response to any
6 inquiry made of him for any purpose.

7 E. Notwithstanding the provisions of Subsection A
8 of this section, a court may elect not to refer an offender to
9 probation or to a substance abuse treatment program if:

10 (1) the offender has been convicted of a
11 violent felony within three years of the offender's commission
12 of the instant offense;

13 (2) the offender has been sentenced to a term
14 of incarceration that would prevent the offender from
15 participating in a substance abuse treatment program; or

16 (3) in the same proceeding that includes the
17 instant offense for a violation of Section 30-31-23 NMSA 1978,
18 the offender has been convicted of or has pending charges for:

19 (a) any other felony offense; or

20 (b) driving while under the influence of
21 intoxicating liquor or drugs, as provided in Section 66-8-102
22 NMSA 1978.

23 Section 6. REPEAL. -- Section 30-31-28 NMSA 1978 (being
24 Laws 1972, Chapter 84, Section 28) is repealed.

25 Section 7. EFFECTIVE DATES. --

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A. The effective date of the provisions of Sections 1 through 4 of this act is July 1, 2003.

B. The effective date of the provisions of Sections 5 and 6 of this act is January 1, 2004.